

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

**KEVIN RANDALL, on behalf of himself
and all others similar situated,**

Plaintiff,

v.

**BURKE & HERBERT
BANK & TRUST COMPANY,**

Defendant.

CIVIL ACTION NO. 1:20cv00183-TSE-MSN

DECLARATION OF JOHN GALLO

I, John Gallo, declare and state as follows:

1. I have been employed by Burke & Herbert Bank & Trust Company (“Burke & Herbert Bank”) since 2011. I am a Principal Vice President of the Marketing Department.
2. My responsibilities include managing analysis and reporting for Burke & Herbert Bank and managing the bank’s data warehouse. As part of my job responsibilities, I am familiar with the data systems that Burke & Herbert Bank utilizes to manage and track transactions by account holders.
3. Working with other Burke & Herbert Bank employees and our data systems provider, I identified the data system files that have the most comprehensive data for debit card transactions for Burke & Herbert Bank accounts.
4. I utilized the daily EP6270P NSF PAID ITEMS BY BANK reports that are saved in Burke & Herbert Bank’s imaging library. These reports capture all transactions that result in an account having insufficient funds, which is an account balance below \$0. I filtered the transactions to show all debit card transactions in consumer bank accounts that resulted in

the account having insufficient funds. I identified a total of 36,609 such transactions during the period from February 20, 2015 through February 20, 2020. This data file does not contain information about whether any fee was charged to the account and if so, the amount of the fee, for any such transaction. As a result, I am not able to determine from this file to what extent Burke & Herbert Bank assessed an overdraft fee for any of these 36,609 transactions.

5. From February 20, 2015 through February 20, 2020, the highest amount charged by Burke & Herbert Bank for an overdraft fee was \$36.00 per item, pursuant to the Schedule of Fees attached hereto as Exhibit "A." If each of the 36,609 transactions identified in Paragraph 4 resulted in an overdraft fee, this would result in a total of \$1,317,924.00 in total fees charged by Burke & Herbert Bank for all consumer overdrafts.
6. I also searched the EPHIS2 file. This is an electronic file that captures the same transactions as the EP6270P reports, and it includes data on the fees that were charged as the result of a particular transaction. The EPHIS2 file contains data for transactions that occurred on 78.8% of the days between February 20, 2015 and February 20, 2020. This represents data for transactions that occurred on 1,439 of the 1,827 days during this five-year period. The EPHIS2 does not contain data for the following periods of time: February 20, 2015 through July 5, 2015, April 29, 2017 through July 2, 2017, and December 30, 2017 through July 4, 2018.
7. I searched the EPHIS2 file for debit card transactions in consumer accounts for which an overdraft fee was charged for the time period February 20, 2015 through February 20, 2020. To identify these transactions, I filtered the data to show results for consumer

account transactions having a numeric transaction code that identifies that transaction as related to the use of a debit card and an amount of “>\$0” for amount of fees charged.

8. Utilizing the search criteria identified in Paragraph 7, I identified a total of 1,973 debit card transactions in the EPHIS2 data file in which an overdraft fee was charged. There were a total of \$67,107 in overdraft fees associated with those transactions. The average overdraft fee charged was \$34.
9. Based on the search criteria identified in Paragraph 7, the EPHIS2 data file reflects that for all debit card transactions from consumer accounts at Burke & Herbert Bank there was an average of \$1400 per month charged for overdraft fees over the five-year period.
10. I understand the Complaint in this case describes certain debit card transactions as “Authorize Positive, Purportedly Settle Negative Transactions” or “APPSN Transactions.” This is not a description or category that Burke & Herbert Bank uses. To determine if any of the debit card transactions identified in Paragraph 4 or 8 met the definition of APPSN Transactions would require an individualized analysis of each transaction. To the extent that there were any APPSN Transactions, those transactions would be a wholly-enclosed subset of the transactions identified in Paragraph 4 or 8.
11. Based on the data in the EPHIS2 file, I have identified a total of 1,164 unique Primary Account holders (i.e., “customers”) who had consumer accounts that had a debit card transaction that incurred an overdraft fee.
12. I was able to determine the state in which the Primary Customer address is located for each of the 1,164 Primary Account holders of the consumer accounts identified in Paragraph 11. The Primary Customer address is the address on file for the Primary Account holder of an

account. I determined that 1,019 of the 1,164 customers (or 87.5%) had a Primary Customer address located in the Commonwealth of Virginia.

13. I further determined that 858 of the 1,164 customers identified in Paragraph 11 had an account of some type open with Burke & Herbert Bank as of February 20, 2020. To make this determination, I searched the Master Customer Information File to determine if the customer had any open account with the bank, including checking, savings, money market account, certificate of deposit, individual retirement account, loan, or a safe deposit box. 742 out of these 858 customers with open accounts, or 86.5%, have a Primary Customer address in the Commonwealth of Virginia. Based on a review of month-end datasets available for December 2015 and March 2016 through February 20, 2020, 97% (or 722) of those 742 customers have had a Primary Customer address only in the Commonwealth of Virginia.
14. Out of the 306 customers that no longer had an open account with Burke & Herbert Bank as of February 20, 2020, 249 (or 81.4%) had a last known address in the Commonwealth of Virginia.
15. These percentages are consistent with the customer base of Burke & Herbert Bank. Of the consumer accounts open with the bank as of as February 20, 2020, 88.6% had a Primary Customer address within the Commonwealth of Virginia.
16. All of Burke & Herbert Bank's branch locations are in the Commonwealth of Virginia.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: 5/1/2020

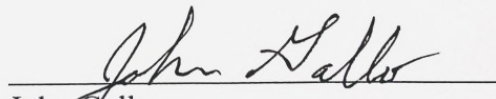

John Gallo

EXHIBIT A

Burke & Herbert Bank
Schedule of Fees
Effective as of January 15, 2020

The following fees apply to all your accounts with us except Certificates of Deposit:

Account-Related Fees

- Overdraft Fee/Returned Item Fee (OD/NSF)..... \$36.00/Item
 - An overdraft fee applies to transactions (checks, in-person withdrawals, ATM withdrawals, and other electronic transactions) that result in a negative account balance.
 - No fee for items that result in an overdrawn balance of \$10 or less.
 - Maximum number of overdraft fees per day is six.
- Returned Deposited Item \$12.00/Item
- Excess Savings/Money Market Withdrawals/Transfers..... \$10.00/Transaction greater than 6 per month

Optional Services

- Overdraft Protection Transfers (from a designated deposit account).....\$10.00/Transfer
- Stop Payment \$35.00/Item
(\$10.00/Item through Business Online Banking)
- Cashier's Check \$10.00/Check
- Printed ChecksVaries based on check style/quantity
- Outgoing Wire Transfers:
 - Domestic Wire..... \$30.00/Wire
(\$10.00/Wire through Business Online Banking)
 - International Wire in Foreign Currency..... \$40.00/Wire
 - International Wire in U.S. Dollars..... \$45.00/Wire
- Incoming Wire Transfers:
 - Domestic and International Wires \$15.00/Wire
- Collection Items:
 - Incoming and Outgoing Domestic and Foreign..... \$30.00/Item
(Plus any Correspondent Bank fees)
- Copies of Statements/Tax Documents..... \$5.00 Each
- Account Statement CD-ROM\$50.00/Account/Year
- Attachment, Lien, Levy, or Garnishment.....up to \$100.00 Each
- Verification of Deposit Accounts/Customer Relationship..... \$5.00/Request
- Burke & Herbert Bank Visa® Gift Card.....\$3.00/Card
(Additional fees may apply)

Debit Card and ATM Services

The following fees apply to Business Debit Card transactions at non-Burke & Herbert Bank
ATMs in the United States:

- Withdrawal*\$1.00
- Balance Inquiry and Transfers*\$0.50

The following fees apply to both Personal and Business Debit Cards:

- International ATM Transactions*\$5.00/Withdrawal, Transfer, Inquiry
- Debit Card Replacement.....No charge for 1st in past 12 months;
otherwise \$5.00/Card

* Additional charges may be assessed by the financial institution that owns the machine.

Online Banking and Business Online Banking

- Account Access, Online Bill Pay, eStatements No Fee
- Online Customizable Gift Check (Gift Pay-e).....\$2.99
- Online Charitable Donation.....\$1.99
- Rush Payments via Online Bill Pay
 - Next Day (check).....\$19.95
 - Second Business Day (check).....\$14.95
 - Second Business Day (electronic).....\$4.95

Mobile Banking

- Account Access, Deposits, Payments, eStatements.....No Fee

Safe Deposit Boxes

Box Size	Annual Fee
• 2" X 5"	\$50.00
• 3" X 5"	\$60.00
• 5" X 5"	\$70.00
• 3" X 10"	\$80.00
• 5" X 10"	\$100.00
• 10" X 10"	\$170.00
• 10" X 15"	\$270.00

Lost Key Replacement..... \$30.00/Key
Drilling At Cost